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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,742	03/16/2004	Aaron Q. Johnson	27683-011	1162
29315 7590 09/14/2009 MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC ONE FINANCIAL CENTER BOSTON, MA 02111				
EXAMINER				
GOODCHILD, WILLIAM J				
ART UNIT		PAPER NUMBER		
2445				
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09/14/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,742

Applicant(s)

JOHNSON ET AL.

Examiner

WILLIAM J. GOODCHILD

Art Unit

2445

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-4, 6-11 and 18-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gusler et al., (US Publication No. 2002/0178072), (hereinafter Gusler) and further in view of Herland et al., (US Publication No. 2003/0018747), (hereinafter Herland).

Regarding claims 1, 18-19, 25, 28-29 and 32-35, Gusler discloses providing a server having a distance calculating module operating thereon [Gusler, paragraphs 45 and 47, a server that is able to determine a shopper's position]; using the distance module [Gusler, paragraph 47 (determine user's position)], calculating a virtual distance between a web page that a user is accessing through a first terminal and web pages accessed by other users through one or more second terminals [Gusler, paragraph 62, a shopper may configure a certain proximity zone, such as a virtual distance radius or a parameter such as within the same virtual store (the instant specification, paragraph 6 defines conceptually near another user)];

displaying for the user on a display a listing of other users determined to be within a predetermined virtual distance from the web page that the user is accessing [Gusler, paragraph 62];
enabling the user to communicate with one or more of the other users from the displayed listing [Gusler, paragraph 52, initiate communications].

Gusler does not specifically disclose wherein the web page that the user is accessing and each of the web pages accessed by the other users comprise any web page on the Internet.

However, Herland, in the same field of endeavor discloses communicating over the network (the internet or corporate intranet), [Herland, paragraph 25].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the entire internet in order to allow users to find each other when virtually close and to engage in communications when within a defined virtual distance.

Regarding claim 3, Gusler-Herland further discloses wherein the virtual distance is calculated by the distance module using a distance mapping technique [Gusler, paragraph 62].

Regarding claim 4, Gusler-Herland further discloses wherein the distance mapping technique comprises identifying users accessing web pages having words or phrases of cognitive similarity [Gusler, paragraph 62].

Regarding claim 6, Gusler-Herland further discloses displaying for the user a listing of the other users further comprises displaying the listing of other users in a graphical user interface (GUI) [Gusler, paragraph 39 and figure 5].

Regarding claim 7, Gusler-Herland further discloses wherein the GUI comprises a web browser [Gusler, paragraph 39 and figure 5].

Regarding claim 8, Gusler-Herland further discloses enabling the user to access profile data associated with one or more of the other users selected from the displayed listing [Gusler, paragraph 58].

Regarding claim 9, Gusler-Herland further discloses the profile data comprises one or more of contact information, demographic information, profession, hobbies, or interests [Gusler, paragraph 63].

Regarding claim 10, Gusler-Herland further discloses enabling the user to communicate with one or more of the other users selected from the displayed listing further comprises

enabling the user to instant message one or more of the other users selected from the displayed listing [Gusler, paragraphs 52, 63 and 72].

Regarding claim 11, Gusler-Herland further discloses enabling the user to communicate with one or more of the other users selected from the displayed listing further comprises enabling the user to e-mail one or more of the other users selected from the displayed listing [Gusler, paragraphs 43 and 52].

Regarding claim 20, Gusler-Herland further discloses wherein the affinity between the data associated with the user and data associated with the other users is determined using similarity of profile attributes [Gusler, paragraphs 57 and 62-63].

Regarding claim 21, Gusler-Herland further discloses identifying the web page that the user is accessing [Gusler, paragraph 57].

Regarding claim 22, Gusler-Herland further discloses determining the presence of other users at or near the web page that the user is accessing [Gusler, paragraphs 57 and 62].

Regarding claim 23, Gusler-Herland further discloses means for identifying the web page that the user is accessing [Gusler, paragraphs 57 and 62].

Regarding claim 24, Gusler-Herland further discloses means for determining the presence of other users at or near the web page that the user is accessing [Gusler, paragraphs 57 and 62].

Regarding claim 26, Gusler-Herland further discloses tracking the virtual location of the user and each of the other users anywhere on the Internet [Herland, paragraph 25].

Regarding claim 27, Gusler-Herland further discloses means for tracking the virtual location of the user and each of the other users anywhere on the Internet [Herland, paragraph 25].

Regarding claim 30, Gusler-Herland further discloses wherein the list of other users is ranked in order of nearest to furthest virtual distance from the web page that the user is accessing [Gusler, paragraph 49].

Regarding claim 31, Gusler-Herland further discloses wherein the list of other users is compiled based on the virtual distance between the web page that the user is accessing and the web pages accessed by the other users being with a predetermined virtual distance [Gusler, paragraphs 49 and 62].

3. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gusler-Herland as applied to claim 1 above, and further in view of Cohen.

Regarding claim 2, Gusler-Herland does not specifically disclose receiving a Uniform Resource Identifier (URI) address of the web page that the user is accessing].

However, Cohen, in the same field of endeavor discloses providing a list including the web page being accessed by another user [Cohen, column 12, lines 27-43 and figure 10].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include listing the other users web page URL in order to allow the user to identify the web page being accessed and determine if they would like to join the other user or communicate with the other user.

Regarding claim 5, Gusler-Herland-Cohen further discloses wherein the distance mapping technique comprises comparing a Uniform Resource Identifier (URI) address of the web page that the user is accessing to URI addresses of the web pages being accessed by other users [Cohen, column 7, lines 11-39].

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gusler-Herland as applied to claim 1 above, and further in view of Wengrovitz, (US Publication No. 2005/0141688).

Regarding claim 12, Gusler-Herland does not specifically disclose enabling the user to communicate with one or more of the other users selected from the displayed listing further comprises enabling the user to initiate a voice over Internet protocol (VoIP) communication with one or more of the other users selected from the displayed listing.

However, Wengrovitz, in the same field of endeavor, discloses presence notification [Wengrovitz, paragraph 6, lines 6-13] with VoIP [Wengrovitz, paragraph 5, lines 8-14]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate voice over Internet Protocol communication via presence notification listing in order to increase the multi-media communication options on-line.

5. Claims 13-14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gusler-Herland as applied to claim 1 above, and further in view of Nachman et al., (US Publication No. 2001/0027474), (hereinafter Nachman).

Regarding claim 13, Gusler-Herland does not specifically disclose enabling the user to communicate with one or more of the other users selected from the displayed listing further comprises enabling the user to initiate a transaction with one or more of the other users selected from the displayed listing.

However, Nachman discloses allowing a user bid against other users [Nachman, paragraphs 18 and 21].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include transactions between users in order to provide a 'richer' experience to the users.

Regarding claim 14, Gusler-Herland-Nachman further discloses the transaction comprises an exchange of currency [Nachman, paragraph 45].

Regarding claim 16, Gusler-Herland-Nachman further discloses enabling the user to execute a search query a against a search engine [Nachman, paragraph 20].

Regarding claim 17, Gusler-Herland-Nachman further discloses results of the search query comprise a listing of one or more web pages, and wherein each of the one or more web pages listed is displayed with an associated visual indicator displaying a number of users currently accessing that respective web page [Nachman, paragraph 40].

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gusler-Herland-Nachman as applied to claim 13 above, and further in view of Pugliese III et al., (hereinafter Pugliese), (US Publication No. 2001/0016825).

Regarding claim 15, Gusler-Herland-Nachman does not specifically disclose the transaction comprises an exchange of at least one of airline frequent flier miles, or affinity program points.

However, Pugliese, discloses charging frequent flier miles [Pugliese, paragraph 65, lines 11-19].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate frequent flier miles as a financial transactions to increase the client's options for financial payments.

Response to Arguments

7. Applicant's arguments with respect to claims 1-35 have been considered but are moot in view of the new ground(s) of rejection.

A – Applicant argues the combination of references for a 103 either for hindsight or suggestion to combine the references (Although the references described within the argument are now different).

A – If one of ordinary skill at the time the invention was made would be in possession of or the knowledge is within art related, then the person of ordinary skill in the art would be considered to have possession of that knowledge.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner's Note: Examiner has cited particular paragraphs / columns and line numbers in the reference(s) applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the cited passages as taught by the prior art or relied upon by the examiner.

Should applicant amend the claims of the claimed invention, it is respectfully requested that applicant clearly indicate the portion(s) of applicant's specification that support the amended claim language for ascertaining the metes and bounds of applicant's claimed invention

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM J. GOODCHILD whose telephone number is

(571)270-1589. The examiner can normally be reached on Monday - Friday / 8:00 AM - 4:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WJG
09/10/2009

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